IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5656 of 2007()

CRIME NO.137/2007 OF VADANAPPALLY POLICE STATION

: PETITIONERS/ACCUSED 3,8,9 & 12

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1. JIGILESH, S/O KRISHNAN,
   KUNNATHERI HOUSE, THALIKULAM VILLAGE,
   CHAVAKKAD TALUK.

2. SAJEEV, S/O SASI,
   ARUKETTY HOUSE, MADAYAKADAVU DESOM,
   CHAVAKKAD VILLAGE.

3. SUJITH, S/O SOMAN,
   VATHATT HOUSE,THALIKULAM VILLAGE,
   CHAVAKKAD DESOM.

4. SUDHEER, S/O DEVAN,
   ALUNGAL HOUSE, THALIKULAM VILLAGE,
   CHAVAKKAD TALUK.

BY ADV. SRI.P.K.ANIL

RESPONDENTS: COMPLAINANT/STATE

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1. THE SUB INSPECTOR OF POLICE,
   VADANAPPALLY POLICE STATION.

2. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5656 of 2007

Dated this the 19th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 3, 8, 9 & 12 in a crime registered for offences punishable, inter alia, under Sections 326 and 308 r/w 149 I.P.C.

2. The learned Public Prosecutor submits that investigation into the crime is already over. The final report has already been filed and the petitioners have been arrayed as accused. It is for the petitioners now to surrender before the learned Magistrate and seek regular bail. The petitioners are not required to be arrested now by the police, it is submitted.

3. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. It is prayed that the learned Magistrate may be directed to grant regular bail to the petitioners.

4. It is for the petitioners to appear before the learned Magistrate and seek regular bail. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient

and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-